

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OCT 03 2014

OFFICE OF
MANAGING DIRECTOR

Charles S. Lotsof, Esq.
1188 Bishop Street, Suite 2711
Honolulu, HI 96813-3311

Licensees/Applicants: **Stereo 97, Inc.**
Waiver and Partial Refund of Application Fees
Disposition: **Denied** (47 U.S.C. § 158(d)(2); 47
C.F.R. §§ 1.1115, 1.1119(a) & (c))
Fee: Application Fees (ULS File Nos. BTCH
20111230ACY and BTCH 20111230ADA)
Stations: KAVV, KAVV-FM & WHB636
Date Request Filed: Jun. 21, 2012
Fee Control No. RROG 12-00014367
Application Fee Amount: \$1,110.00

Dear Mr. Lotsoff:

This letter responds to Licensees' *Request*¹ for a waiver and partial refund of two application fees paid in connection with the transfer of control after the death of the sole shareholder of the Licensee's corporate entity. We deny Licensee's *Request* because it does not establish valid grounds under 47 C.F.R. §§ 1.1115 and 1.1119, our rules for refund of application fees and waiver.

On June 21, 2012, Licensee "request[ed] that \$970 of the \$1,110 in application fees paid in January 2012 ... in connection with the transferring of control of the owner of the[] stations be waived and refunded ... on the basis that the transfer was in essence a single involuntary transfer of control ... brought about [by] the death of the corporation's sole stockholder [who] died intestate [resulting in a transfer of stock to] his son ... pursuant to the New York Estates, Powers and Trust law."² Licensee asserted that it "never made a profit in any fiscal year since its inception in 1979 ... its most recent fiscal year ... lost money [and the] most recent financial statement is already part of this licensee's record."³ Licensee did not include any financial documentation to support the broad statement of financial hardship or any explanation of the applicable state law related to the transfer.

¹ Letter from Charles S. Lotsof, Esq., 1188 Bishop St., Suite 2711, Honolulu, HI 96813 to Attn: Application Fee Waiver Requests, Office of Managing Director, 445 12th St., S.W., Room 1-A625, FCC, Washington, DC 20554 (Jun. 21, 2012) (*Request*).

² *Id.*

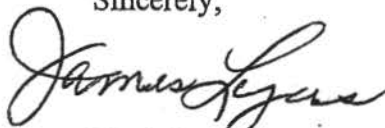
³ *Id.*

Under 47 C.F.R. § 1.1115, refunds are made in only specific instances, *i.e.*, (1) no fee is required for the application or other filing, (2) where the Commission's staff determines, within 30 days of submission, the fee was insufficient, and the application is dismissed, (3) the applicant cannot fulfill an age requirement, (4) the Commission has adopted new rules that nullify a filed application, (5) when a waiver is granted in accordance with section 1.1119, or (6) when an application is not timely filed. Because Licensee did not specify which of these grounds is the basis for his Request, we look to the context of the submission and from that construe that Licensee seeks a waiver of the fee under 47 C.F.R. § 1.1119 (a) and (c), and thereafter the refund.

Under 47 C.F.R. § 1.1119(a),⁴ which implements statutory waiver provisions,⁵ we may waive an application fee in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest. As such, we conduct a case-by-case review to determine the public interest is served by the waiver.⁶ Licensee's task was to show "extraordinary and compelling circumstances" that outweigh the public interest in recouping the cost of the Commission's regulatory services.⁷ It appears from the context of the Licensee's Request that the described procedure requiring two applications resulted from decedent's intestacy and procedures required by state law. The resulting Commission fees are expenses payable from the estate to effect transfer of property to an heir. Licensee failed to establish that the described circumstances are extraordinary or compelling. As such, Licensee failed to establish good cause for waiver of the application fees, and that waiver will serve the public interest. Thus, we deny the Request.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



FOR: Mark Stephens
Chief Financial Officer

⁴ 47 C.F.R. § 1.1119(a) provides, "The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest."

⁵ 47 U.S.C. § 158(d)(2) ("The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest.").

⁶ See 47 C.F.R. § 1.925 ("The Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.").

⁷ Accipiter Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241 (2001).